



## A neutral Internet

TRAI recommendations for Net neutrality must be urgently acted upon

The struggle to keep the Internet freely accessible to all got a welcome shot in the arm on Tuesday. The Telecom Regulatory Authority of India (TRAI) finally came out with clear guidelines in favour of Net neutrality that are consistent with its earlier stand on Facebook's Free Basics proposal. After consultation papers issued in May 2016 and this January, the regulator reiterated that there cannot be discriminatory treatment of websites on the Internet by service providers. In particular, TRAI warned providers against the practice of blocking certain websites and tinkering with content speeds. This, in a nutshell, means that service providers such as telecom companies cannot stand in the way of a consumer's access to content that would otherwise be provided to her without any undue hindrance. They cannot, for instance, charge consumers for access to certain content, or receive payment from websites promising greater promotion of their product over the rest. Quite notably, TRAI's decision comes in the wake of international focus on the U.S. Federal Communications Commission's decision to scrap regulations on service providers imposed during the Obama administration. While battling for the right to an open Internet, however, TRAI has been careful to allow some exceptions that allow companies to discriminate between content if it helps them regulate the flow of traffic or offer "specialised services".

While TRAI's new guidelines will help the cause of building the Internet as a public platform with open access to all, the concerns of service providers should not be dismissed altogether. The Internet has spread all over the world, so widely that many believe it is now an essential good. But the infrastructure that serves as the backbone of the Internet has not come without huge investments by private service providers. So any regulation that severely restricts the ability of companies to earn sufficient returns on investment will only come at the cost of the welfare of the public. In this connection, TRAI has been open to adopting a nuanced view that differentiates between various forms of content instead of imposing a blanket ban on all forms of price differentiation. The new policy, for instance, will still allow companies to justify the costs incurred in providing niche content to consumers. At the same time, TRAI's measured response is likely to effectively address the problem of anti-competitive practices adopted by certain providers. Interestingly, it has left it, with important caveats, to the government to decide on services that count as "specialised" and deserve exceptional treatment by regulators. To this end, a proper mechanism needs to be instituted to make sure that the exceptions are not used as loopholes by the big Internet players. Policymakers will also need to think hard about creating an appropriate legal framework to prevent the capture of regulation by special interests.

## Eliminate torture

A standalone law to prevent custodial cruelty is in India's interests

Enacting a law prohibiting torture is both a moral imperative and a pragmatic necessity. The Union government has informed the Supreme Court that it is seriously considering the 273rd Report of the Law Commission, which has recommended that India ratify the United Nations Convention against Torture and pass a law to prevent torture and punish its perpetrators. A few months ago, the court had sought the Centre's response to a petition filed in public interest by former Union Law Minister Ashwani Kumar, who complained about the delay in India ratifying the UN Convention, which it had signed in 1997. The petition had also favoured a standalone legislation to prohibit torture. The court disposed of the matter without any direction after being informed that the matter was under serious consideration. The Centre should now act on its own with a sense of urgency. There can be no reason to further delay legislative measures to eliminate all forms of torture and other cruel, inhuman and degrading forms of treatment. At an earlier hearing, the court had itself highlighted why a standalone law is needed. India has made many requests for extradition of offenders from other countries, and the absence of an anti-torture law may prevent these countries from acceding to India's requests. Earlier this month, extradition courts in the United Kingdom refused to send two persons to India to face trial, one of them on the ground that there was "no effective system of protection from torture in the receiving state". Conditions in India's prisons, especially the chronic problem of over-crowding, are a reason for the country's extradition requests failing.

Few would disagree that ratifying the UN Convention and following it up with a domestic law against torture will not only be in the national interest but also have positive implications for the protection of human rights. Custodial violence continues to be prevalent in the country. The recent example of a bus conductor being forced to confess to murdering a schoolchild is a pointer to the use of torture as an investigative tool among policemen. The Prevention of Torture Bill was passed by the Lok Sabha in 2010 to address the problem, but it lapsed after it was referred to a Select Committee in the Rajya Sabha. The Law Commission, to which the question was referred in July this year, produced a report within three months. It also submitted a draft Bill for the government's consideration. The government should accept the recommendations without delay as it not only provides a penal framework for punishing public servants who inflict torture, but also lays down that just compensation be paid to victims.

# Let Hadiya take charge of her life

Her case reveals how deeply the current climate created by sectarian ideologies has pushed back women's rights



BRINDA KARAT

The Supreme Court did not allow itself to be converted into a khap panchayat, although it came close to it on Tuesday as it heard the Hadiya case. The counsel for the National Investigation Agency (NIA) supported by the legal counsel of the Central government made out a case of indoctrination and brainwashing in a conspiracy of 'love jihad' which they claimed rendered Hadiya incapacitated and invalidated her consent. The NIA wanted the court to study the documents it claimed it had as evidence before they heard Hadiya. For one and a half hours, this young woman stood in open court hearing arguments about herself, against herself and her chosen partner. It was shameful, humiliating and set an unfortunate precedent. If the court was not clear that it wanted to hear her, why did they call her at all? She should never have been subjected to that kind of indignity. She is not a criminal but she was treated like one for that period of time.

### The right to speak

The court remained undecided even in the face of the compelling argument by lawyers Kapil Sibal and Indira Jaising representing Hadiya's husband Shafiq Jahan that the most critical issue was that of the right of an adult woman to make her own choice. The court almost adjourned for the day when the Kerala State Women's Commission lawyer, P. Dinesh, raised a voice of outrage that after all the accusations against Hadiya in the open court if the court did not hear her, it would be a grave miscarriage of justice. In khap

panchayats, the woman accused of breaking the so-called honour code is never allowed to speak. Her sentence begins with her enforced silence and ends with whatever dreadful punishment is meted out to her by the khap. Fortunately the Supreme Court pulled itself back from the brink and agreed to give Hadiya an opportunity to speak.

There was no ambiguity about what she said. It was the courage of her conviction that stood out. She wanted to be treated as a human being. She wanted her faith to be respected. She wanted to study. She wanted to be with her husband. And most importantly, she wanted her freedom.

The court listened, but did it hear?

Both sides claim they are happy with the order. Hadiya and her husband feel vindicated because the court has ended her enforced custody by her father. She has got an opportunity to resume her studies. Lawyers representing the couple's interests have explained that the first and main legal strategy was to ensure her liberty from custody which has been achieved. They say that the order places no restrictions on Hadiya meeting anyone she chooses to, including her husband. It is a state of interim relief.



Her father claims victory because the court did not accept Hadiya's request to leave the court with her husband. Instead the court directed that she go straight to a hostel in Salem to continue her studies. He asserted this will ensure that she is not with her husband who he has termed a terrorist.

The next court hearing is in January and the way the court order is implemented will be clear by then.

The case reveals how deeply the current climate created by sectarian ideologies based on a narrow reading of religious identity has pushed back women's rights to autonomy as equal citizens. From the government to the courts, to the strengthening of conservative and regressive thinking and practice, it's all out there in Hadiya's case.

One of the most disturbing fallouts is that the term 'love jihad' used by Hindutva zealots to target inter-faith marriages has been given legal recognition and respectability by the highest courts. An agency whose proclaimed mandate is to investigate offences related to terrorism has now expanded its mandate by order of the Supreme Court to unearth so-called conspiracies of Muslim men luring Hindu women into marriage and

forcibly converting them with the aim of joining the Islamic State. The underlying assumption is that Hindu women who marry Muslims have no minds of their own. If they convert to Islam, that itself is proof enough of a conspiracy.

This was clearly reflected in the regressive order of the Kerala High Court in May this year which annulled Hadiya's marriage. Among other most objectionable comments it held that a woman of 24 is "weak and vulnerable", that as per Indian tradition, the custody of an unmarried daughter is with the parents, until she is properly married." Equally shocking, it ordered that nobody could meet her except her parents in whose custody she was placed.

### Not a good precedent

Courts in this country are expected to uphold the right of an adult woman to her choice of a partner. Women's autonomy and equal citizenship rights flow from the constitutional framework, not from religious authority or tradition. The Kerala High Court judgement should be struck down by the apex court. We cannot afford to have such a judgment as legal precedent.

The case also bring into focus the right to practice and propagate the religion of one's choice under the Constitution. In Hadiya's case she has made it clear time and again that she converted because of her belief in Islam. It is not a forcible conversion. Moreover she converted at least a year before her marriage. So the issue of 'love jihad' in any case is irrelevant and the court cannot interfere with her right to convert.

As far as the NIA investigation is concerned, the Supreme Court has ordered that it should continue. The Kerala government gave an additional affidavit in October stating that "the investigation conducted so far by the Kerala police has not revealed any incident re-

lating to commission of any scheduled offences to make a report to the Central government under Section 6 of the National Investigation Agency Act of 2008." The State government said the police investigation was on when the Supreme Court directed the NIA to conduct an investigation into the case. It thus opposed the handing over of the case to the NIA. In the light of this clear stand of the Kerala government, it is inexplicable why its counsel in the Supreme Court should take a contrary stand in the hearing - this should be rectified at the earliest.

### Vigilantism by another name

The NIA is on a fishing expedition having already interrogated 89 such couples in Kerala. Instead of inter-caste and inter-community marriages being celebrated as symbols of India's open and liberal approach, they are being treated as suspect.

Now, every inter-faith couple will be vulnerable to attacks by gangs equivalent to the notorious gau rakshaks. This is not just applicable to cases where a Hindu woman marries a Muslim. There are bigots and fanatics in all communities. When a Muslim woman marries a Hindu, Muslim fundamentalist organisations like the Popular Front of India use violent means to prevent such marriages. Sworn enemies, such as those who belong to fundamentalist organisations in the name of this or that religion, have more in common with each other than they would care to admit.

Hopefully the Supreme Court will act in a way which strengthens women's rights unencumbered by subjective interpretations of tradition and communal readings of what constitutes national interest.

Brinda Karat is a member of the CPI(M) Polit Bureau and a former Rajya Sabha MP

## The road to an open Internet

The telecom regulator's support for Net neutrality fulfils constitutional promises



APAR GUPTA

Telecom policy rarely captures the popular imagination. While many may have immediate concerns on the nuisance of unsolicited telemarketing, worries of over-billing or even allegations of corruption in the reward of licences, they rarely take an active interest and become stakeholders in the development of a regulation.

Debates around network neutrality have breached this barrier. The willing embrace of Net neutrality by many, including the Telecom Regulatory Authority of India (TRAI), is not only a function of mass rhetoric and intelligent campaigning but of the concept of Net neutrality itself taking forward values of Indian constitutionalism.

### Freeing it up

Put simply, Net neutrality creates rules of the road for a free and open Internet. It requires that barriers should not be created by telecom and Internet service providers for user choice by limiting their power to discriminate between content providers and different

classes of content. Through binding rules and regulations, the power of access providers to selectively price or create technical imbalances is corrected. Such an argument immediately appeals to our sense of fairness, for it based on maintaining a level of equality in the use of a common resource. This finds express acknowledgement in the precedent of the Supreme Court where it has stated that the power to license spectrum and telegraphs is held by the government as a trustee of public interest.

In one of the more recent judgments which arose from a presidential reference on the allocation of natural resources, the Supreme Court observed that, "as natural resources are public goods, the doctrine of equality, which emerges from concepts of justice and fairness, must guide the state in determining the actual mechanism for distribution of material resources."

Taking this forward, TRAI in its recommendations on Net neutrality has suggested amendments to the various classes of telecom and Internet licences to have an express recognition of a non-discriminatory principle for Internet content. Such recommendations set a broad rule with tailored exceptions that are conditioned on touchstones of reasonableness.



Beyond equality and reasonableness, which may seem evocative though fuzzy principles, a more tangible appreciation of Net neutrality is immediately felt on our liberty. The Internet today affords millions of Indians with an immediate audience without the traditional costs of distribution. Tinkering with its character, or carving it up in slices as would happen in the absence of Net neutrality, would fragment its community and the diversity of choice offered by it. This would impact both the right to speak and the ability to receive knowledge, hence impacting our right to freedom of speech and expression.

Again, such realisation is found in the Differential Pricing Regulation issued on February 8, 2016, which prevented telecom companies from pricing access to Internet websites and content differently. In the explanatory memorandum to this regulation,

TRAI states, "As observed by the Supreme Court, in the Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, (1995) 2 SCC 161, para 201(3)(b) allowing citizens the benefit of plurality of views and a range of opinions on all public issues is an essential component of the right to free speech. This includes the right to express oneself as well as the right to receive information as observed by the Supreme Court in the Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India, (1985) 1 SCC 641 case."

### Constitutional guarantees

The concepts of equality, reasonableness and liberty which underpin the social contract which gives rise to the Indian Constitution are not mere black letters of the law. They are more than mere limitations on state power in favour of individuals. By themselves, they are at their very best when they are put into motion by positive actions by regulators and governments. To achieve these objectives, there is a necessity to popularise the constitutional doctrine in ways and methods which seem immediate and cater to the daily problems of the modern world. The debates around Net neutrality in India have shown how a stand-up comedy video can

spark a spontaneous campaign, spur more than a million people to send e-mails to a telecom regulation consultation when the stakes are clearly explained and there is a broad coalition of civil society voices.

The Net neutrality campaign has not been without criticism and growing public disappointment. While such sentiments may arise from legitimate concerns, they are disproportionate to the greater benefit of raising public debate. To restrict any public policy measure, especially something as important as Net neutrality, to a restricted group of experts without a chance of public engagement betrays elitism. Further, the repeated rounds of public consultation which have brought on some amount of fatigue are due to the inherent complexity of the regulatory exercise. This also provides us a lesson that the enjoyment of Net neutrality will require constant, hard work - no victories are permanent. But for a moment we can cause to celebrate how TRAI's recommendations on Net neutrality provide hope that modern technologies can refresh constitutional doctrine and also deepen participatory democracy.

Apar Gupta, a Delhi-based lawyer, was one of the members of Save the Internet

## LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

### Cause for worry

The democratic principles that Pakistan managed to project to the world have dimmed and even diminished with the government bowing to the demands of a little-known radical group, the Tehreek-i-Labaik Ya Rasool Allah (Editorial - "Road to chaos", November 29). That the protests it engineered in parts of Pakistan resulted in the resignation of the Law Minister on allegations of "blasphemy", among other things, have only strengthened the hands of radical and religion-driven groups in Pakistan. The almost paralytic state of the civilian administration, which brought in the military and its allied organisations such as the ISI centre stage exposes the nexus between the Pakistan Army and

extremist elements. It might not come as a surprise if this eventually paves the way for the military to step in. India has no interest in interfering in the internal affairs of any state, but instability across the border is cause for concern. Any political crisis in Pakistan will be a fertile ground for the germination of new religious and extremist-driven groups, with their target being India alone. There is bound to be greater pressure on Indian security forces. One only hopes that good sense prevails in Rawalpindi and Islamabad.

K. VINAY KUMAR,  
Visakhapatnam

### Political road ahead

It is beyond my comprehension why the CPI(M) refuses to join the

proposed united front of secular parties opposed to the BJP just because it is led by the Congress ("The Wednesday Interview" - "CPI(M) cannot be part of an alliance with the Congress", November 29).. The party does not seem to see the reality that among the secular parties, it is the Congress alone that has an all-India presence. And it is unrealistic to expect all those Opposition parties to accept the CPI(M) to lead such a united front because the CPI(M) has a strong base only in two small States. It is only at its own peril that the party can overlook the fact that it is under constant threat in these States also by the radical right which has immense resources at its disposal. I am afraid the party will not be able to

sustain even the base that it has for long unless it has the support of other secular parties, including the Congress. It is also unrealistic to expect all other Opposition parties to accept the politico-economic programme of the party, especially its opposition to a neo-liberal economics. The objective of the "united front" is limited - only to ensure that the BJP, an authoritarian theocratic party, is ousted from power by democratic means.

V.M. MOHANRAJ,  
Mumbai

### AAP at five

Any political party with lofty ideals but without the support of the masses cannot make an impact ("The dream and the reality of AAP", November 29). A survey of the parties

thriving in Indian politics shows that it is only over a period of time, and with concerted efforts, that a party can emerge as a force to reckon with. There were many flaws in AAP's functioning. To begin with, it was in a hurry to make an impact. Any new idea takes time to resonate with the electorate. Second, Anna Hazare was considered by many as the guiding force and when he was sidelined, it weakened the party considerably. Third, Indians are steadfastly corrupt in getting things done and did not believe AAP when it promised governance without corruption. Fourth, AAP did not have politically popular leaders at the regional level. Any deliberation on AAP's debacle must address these

practical aspects first before taking up the nuances.

V. LAKSHMANAN,  
Tirupur, Tamil Nadu

### Too much cricket

Virat Kohli is right that a cramped cricketing schedule is affecting the Indian team's preparations for overseas tours. It is unfortunate that a cash-rich BCCI appears to be watching only the cash chest by bundling in Tests/ODIs and even T20s. Instead, the Board should have given ample time for the boys to prepare for the sterner tests. The board's blinkered vision is what has caused even the South African Cricket Board to prune its schedule.

KAVITHA SRKANTH,  
Thane, Maharashtra

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